

Birmingham City Council
Report to Cabinet Committee – Group
Company Governance

12 November 2020



Subject: Creation of a limited Company to form the Commonhold Association at Tudor Rose Grove (off Ebrook Road), Sutton Coldfield

Report of: Interim Assistant Director – Housing Development

Relevant Cabinet Member: Councillor Brigid Jones, Deputy Leader

O&S chair

Report author: Gill Beveridge, Principal Housing Development Officer, Inclusive Growth Directorate
 Email Address: gill.x.beveridge@birmingham.gov.uk

Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Sutton Coldfield Trinity		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference: N/A		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1 Executive Summary

1.1 The report seeks approval for the creation of a Commonhold Association company which is a company limited by guarantee to enable the implementation of a Commonhold Community Statement amongst homeowners in Tudor Rose Grove (off Ebrook Road). Tudor Rose Grove is a Birmingham Municipal Housing (BMHT) sale development of 6 units in the Sutton Coldfield ward.

2 Recommendations

- 2.1 Approves the creation of a company limited by guarantee to act as a Commonhold Association company as a vehicle to implement a Commonhold Community Statement at Tudor Rose Grove (off Ebrook Road).
- 2.2 Approves Birmingham City Council being registered as a member of the Commonhold Association until completion of the sale of the last unit into private ownership.
- 2.3 Approves the appointment of two Birmingham City Council nominated Directors to the Commonhold Association
- 2.4 Authorises the City Solicitor (or their delegate) to execute and complete all necessary documentation to give effect to the above recommendations.

3 Background

3.1 Purpose of Company

- 3.1.1 BMHT's preference is always to build adoptable roads, but sites do not always meet the design standards necessary for adoption and these are often the smaller ex garage sites. Where adoption of the highway is not achievable, retaining control over the development without an adopted road is preferable to leaving them undeveloped or sold to a private developer who may build a poorer quality access road.
- 3.1.2 Tudor Rose Grove is a former garage site off Ebrook Road, Sutton Coldfield and is currently being developed to provide 6 homes for sale via BMHT. The homes are accessed by a roadway leading from Ebrook Road to Tudor Rose Grove creating a private community of homes. The roadway at Tudor Rose Grove cannot be adopted due to its width, and therefore, if approved, the intention is to register the roadway and shared areas of the development as Commonhold land whereby, , the freehold ownership of the access road will be passed to the Commonhold Association Company. All future repairs and maintenance of the unadopted road and associated drainage will then become the responsibility of the Commonhold Association Company which will be run by the homeowners of the 6 units. A Commonhold Community Statement will also form part of the registration at the Land Registry and will manage this responsibility in a similar way to how a lease would manage this, however, rather than multiple leases there would be one Commonhold Community Statement for all homeowners.
- 3.1.3 The Commonhold Community Statement will include a Road and Drainage Maintenance Schedule (see Appendix C) which gives a clear indication of the responsibilities of the Commonhold Association Company and makes the company participants fully aware of their future obligations, thus limiting the risk of any approach to the council for support. This includes a formal contract to ensure the shared contribution by homeowners for any repairs and maintenance required. All assignable construction warranties for the roadway will also be

passed to the Commonhold Association Company and subsequently passed on to any succeeding owners in the future via the contract of sale.

- 3.1.4 In order to put a Commonhold Community Statement in place, the shared land, i.e. the access road, must be registered with the Land Registry as Commonhold land and placed under the ownership of a company owned by those who benefit from the shared areas of the development. The Land Registry cannot accept an application for the Commonhold land until the Commonhold Association company has been created. The creation of the company and the registration of Commonhold land at the Land Registry must be finalised before the sale of the units are completed to ensure that the repairs and maintenance of the roadway and associated drainage system is the joint responsibility of all owner occupiers within Tudor Rose Grove and that Birmingham City Council does not retain any of the responsibility for maintenance.
- 3.1.5 Due to the requirements to have the Commonhold land registered before the sale of the units can be completed, Birmingham City Council, as the developer, will need to create the company in anticipation of the home-owners taking on the company once all units have been sold. As part of the creation of the Commonhold Association company, Birmingham City Council would need to be registered as the first Member of the company and nominate two BCC officers as Directors to be appointed initially on incorporation of the company. Once the Commonhold land is registered and the sale of units can be completed, the completion paperwork will ensure that the new homeowners become members and Directors of the Commonhold Association. Once the final unit has been sold, Birmingham City Council will withdraw its membership of the Company and its Directors will resign. The Company will then be fully owned by the homeowners and Birmingham City Council will have no further involvement with the Company.
- 3.1.6 The build of the site is progressing well and assuming that the commonhold registration and associated paperwork is in place, it is anticipated that the sales will be completed in early 2021. Advertising of the site has recently gone live and 5 of the 6 units have already been reserved.
- 3.1.7 The current position in the construction phase deems it important to be able to proceed with the registration of the company to achieve the Commonhold Community Statement. This will ensure that the road, built to a high standard, will be maintained in the future by those who enjoy sole use by ownership of the land. In order to successfully market the scheme, we need to reach exchange of the sales contracts and give full clarity to the purchasers on the ownership and repair obligation within that contract.

3.2 Why an Alternative Delivery / Special Purpose Vehicle?

- 3.2.1 The Tudor Rose Grove Commonhold Association company is required as a vehicle to handover responsibility for the repairs and maintenance of the highway and associated drainage to the owner occupiers of the 6 units. The use of a

Commonhold Community Statement is not common practice within the council, and this is the first time such an agreement has been used. Possible alternatives to this solution have been sought and the outcomes are as follows:

- 3.2.1.1. Road adoption – all BMHT roads are constructed to adoptable standard i.e. the actual physical construction of the roads is the high, robust quality required by Highways which have a long-life cycle and require less ongoing maintenance. Extensive consultation took place with Highways regarding the design of the road and considerable time was spent to seek alternative layouts. Unfortunately, the width of the access road does not meet the requirements for safe access of vehicles and pedestrians for adoption standards. In addition, had the access road been wide enough, the drainage/SUDS for adoption was prohibitively expensive, as was the suggestion that upgrades to the main highway may result. However, the key reason was that the turning head could not be changed to meet the design requirements to comply with Highways adoption standards making the option impossible.
- 3.2.1.2. Management Company – the cost and time associated with the procurement process for this option has made it unrealistic, when looked at with the likelihood of success in mind. Preliminary market enquiries showed that there would in likelihood be little to no interest in a site of 6 units and if taken up would push high management charges on to prospective owners. Management companies tend to take on the maintenance of communal areas of apartment blocks and surrounding shared spaces, for which they receive a service charge. They also tend to operate in areas where they have a number of similar sites within the area making this increasingly attractive, however, there is nothing close to Tudor Rose Grove to help make the investment more viable. As the service charge at Tudor Rose Grove would be minimal this option is uneconomic as they would get very little return for their investment. Advice from Hunters Estate Agents who Forward Homes appointed as the sales agent for Tudor Rose Grove was that a high management charge would have a detrimental effect on the marketing of the new homes. This option was therefore rejected.
- 3.2.1.3. Retain ownership by BCC – this option would result in an ongoing repairs and maintenance responsibility for the Council which would not be desired as Tudor Rose Grove is a private development. The cost of this option would therefore make it uneconomic. It is also not possible to retain and maintain within the Housing Revenue Account (HRA) as no subsidy can be given to non-HRA interests. The Commonhold Association passes the repair and maintenance of the road to the owners removing BCC's liability.

3.3 Type of Company vehicle proposed and rationale

3.3.1 The company will be a company limited by guarantee and will have no share capital. It will initially be owned by BCC as a vehicle to register the land as Commonhold land and to bring the Commonhold Community Statement into effect, ensuring the responsibility of maintenance is passed to the owner occupiers. Ownership will be transferred to the purchasers of the 6 units at Tudor Rose Grove upon completion of each sale.

3.4 Company Equity

3.4.1 There will be no implications to BCC with regard to equity, long term loans or cash flow loans to give it the initial resources or working capital to ensure its solvency. The Company will be limited by guarantee and will have no share capital.

3.5 Objectives

3.5.1 The objectives of the Tudor Rose Grove company are to enable the registration of the shared access road and associated drainage as Commonhold land and to establish a Commonhold Community Statement requiring the ongoing maintenance and repair of the access road and associated drainage at the joint expense of the owner occupiers of the 6 units that make up the site.

3.6 Governance

3.6.1 Once the units are sold, governance arrangements for the company will be the responsibility of the owner occupiers of the 6 units and they will be required to carry out the usual filing expected for a company limited by guarantee. It will be their joint responsibility to form a company board and elect a company secretary. The Council's role is to establish the company to allow the land to be registered as Commonhold and then immediately upon the sale of the last unit, withdraw from the company and handover responsibility of future management of the company to the home owners.

3.7 Intelligent Client Function

3.7.1 There are no cost or resource implications for BCC, other than to establish the company. On completion of the sale of the final unit, the Council will withdraw their membership from the Company and the BCC nominated Directors will resign. The Council will hold no further interest in the company and there will be no requirement for continuous monitoring, handling or processing of information provided by the company.

3.8 TUPE, Pensions Implications

3.8.1 There are no implications for BCC staff.

3.9 Guarantees and indemnities required

3.9.1 The company will not require any guarantees in respect of pension fund, cash flow, etc.

3.10 Tax and VAT implications

3.10.1 There is no requirement for consultation with Council's Tax Specialist

3.11 Financial Implications

3.11.1 There is no requirement for budget transfers, state aid considerations or impact on support services and accommodation.

3.12 Financial Reporting

3.12.1 On completion of the sales of the 6 units, any financing of the company will be the sole responsibility of the company owners. BCC will not be a shareholder and there will be no financial implications for BCC or requirements for financial reporting.

3.13 Procurement/Legal Implications

3.13.1 There are no procurement implications.

3.13.2 The creation of the limited company will be managed by Legal Services including the withdrawal from the company on completion of the final unit sale.

3.13.3 The Articles of Association for the Company will be taken from the prescribed form set out in the Commonhold Regulations 2004 as amended by the Commonhold (Amendment) Regulations 2009.

3.13.4 The Commonhold Association will be governed by the Commonhold and Leasehold Reform Act 2002 and must be run as a limited company in accordance with the requirements under the Companies Act 2006.

3.14 Assets

3.14.1 The company will not acquire assets other than the joint ownership of the unadopted highway at Tudor Rose Grove, which will be the responsibility of the company owners.

3.15 Borrowing and Investing

3.15.1 The company will manage its own borrowing and investments, to be agreed by the company owners. The Commonhold Community Statement will set out each owner's responsibility. This will not include BCC.

3.16 IT and Data

3.16.1 The company will not use any BCC systems, and will be responsible for the management of any data that it holds. This will not include BCC data.

4 Risk Management

4.1 There is a risk to BCC that the units will not sell and therefore the units will remain in the ownership of the Council. However, at the time of writing this report, the marketing of the units has been launched and there is a healthy interest in the purchase of the units with 5 of the 6 units already being reserved. It is anticipated that the units will be sold on completion of the build, in early 2021, subject to the Commonhold registration having been completed. As the developer, BCC are permitted to retain the membership and their appointed Directors while they still

retain ownership of a unit. In the unlikely event that not all units are sold before building completion in early 2021, BCC will be able to retain some control and influence in the Commonhold land until the final unit is sold and BCC has no further involvement in the site.

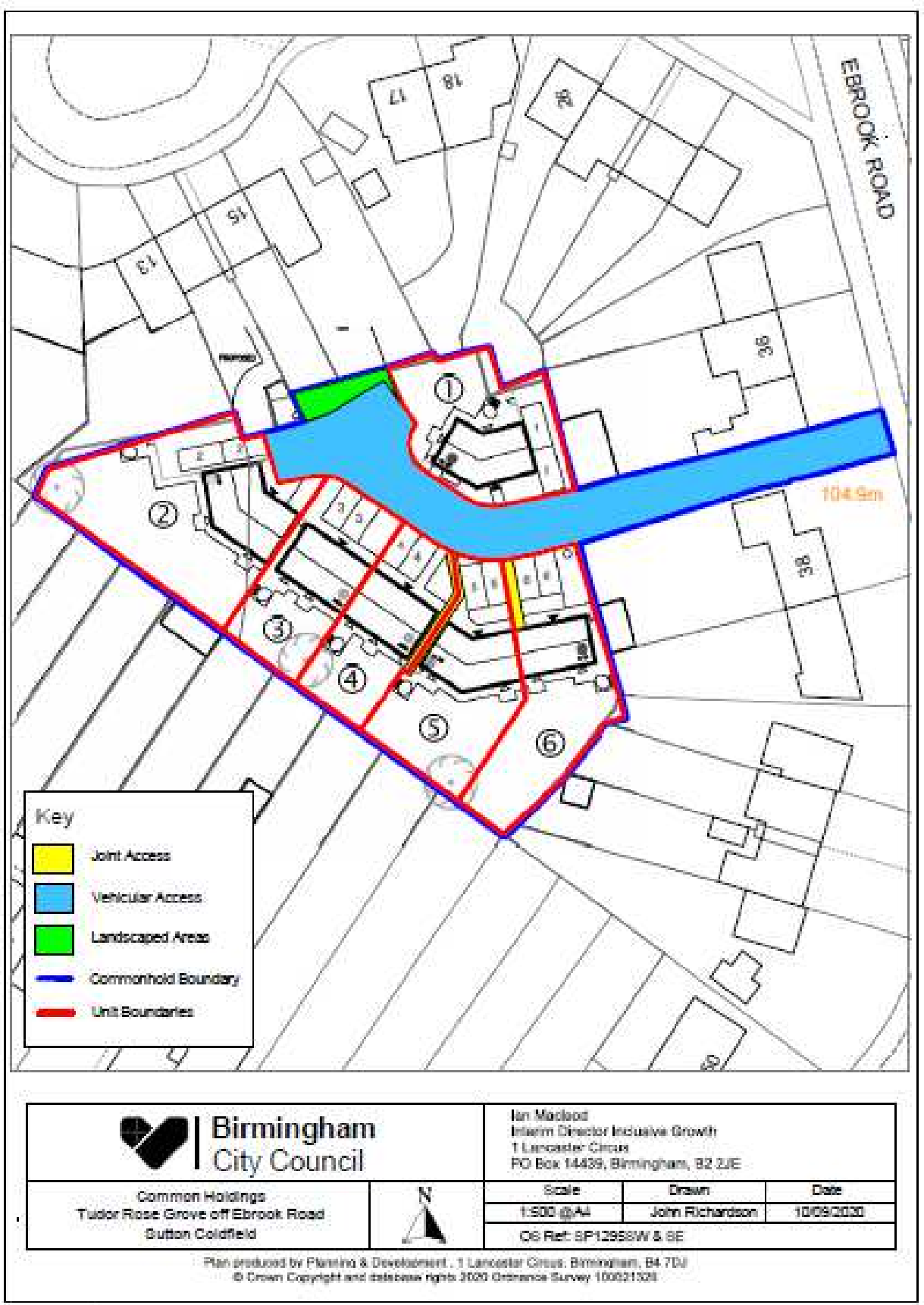
5 Appendices

5.1 Appendix A – Site Plan



5.2 Appendix B – Draft Commonhold Community Statement

5.3 Appendix C – Draft Road & Drainage Maintenance Schedule

Appendix A – site plan



Key	
	Joint Access
	Vehicular Access
	Landscaped Areas
	Commonhold Boundary
	Unit Boundaries

 Birmingham City Council	Ian Macleod Interim Director Inclusive Growth 1 Lancaster Circus PO Box 14439, Birmingham, B2 2JE		
	Common Holdings Tudor Rose Grove off Ebrook Road Sutton Coldfield		Scale 1:500 @A4
Date 10/09/2020			
OS Ref: SP12956W & SE			

Plan produced by Planning & Development, 1 Lancaster Circus, Birmingham, B4 7DJ
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Commonhold Community Statement
Of
Tudor Rose Grove, Sutton Coldfield

Name of Commonhold: Tudor Rose Grove

Name of the Commonhold Association: TBA

Company Number of the Commonhold Association: TBA

Definition of properties within the Commonhold:

1 Tudor Rose Grove, Sutton Coldfield, B72 1PF

2 Tudor Rose Grove, Sutton Coldfield, B72 1PF

3 Tudor Rose Grove, Sutton Coldfield, B72 1PF

5 Tudor Rose Grove, Sutton Coldfield, B72 1PF

7 Tudor Rose Grove, Sutton Coldfield, B72 1PF

9 Tudor Rose Grove, Sutton Coldfield, B72 1PF

Description of location and extent of the commonhold land:

The roadway as shown in the attached plan and all drainage and attenuation storage tanks associated with the commonhold land.

Description of the repairs and maintenance associated with the commonhold agreement:

Please see attached appendix C. This will be for the life of the roadway and includes full re-surfacing work if required.

Description of responsibility for repairs and maintenance:

All owners of the above-mentioned properties will have an equal responsibility for the repairs and maintenance of the commonhold land and associated costs regardless of the property size and occupation.

Appendix C

Access Road – Typical Maintenance Schedule
Tudor Rose Grove, Sutton Coldfield

Operation and Maintenance Requirements for Access Road		
Maintenance Schedule	Required Action	Typical Frequency
Routine Maintenance - Preventative	Brush road at regular intervals with the detritus collected and removed, not brushed into the drainage system	General regular maintenance
	Check gullies are operational and remove silt as necessary	Refer to drainage maintenance schedule
	Remove weed growth and build up of debris at junction of kerbs and road (to prevent degradation of tarmac and to allow free flow of water to gullies)	Check and remove weeds at monthly intervals over late spring, summer and early autumn
Regular Maintenance - Corrective	Repair potholes and surface damage (including any future resurfacing requirements)	As required but as soon as possible after occurrence

Drainage System – Typical Maintenance Schedule
Tudor Rose Grove, Sutton Coldfield

Operational and Maintenance Requirements for Attenuation Storage Tanks		
Maintenance Schedule	Required Action	Typical Frequency
Regular Maintenance	Inspect and identify any areas that are not operating correctly. If required, take remedial action	Monthly for 3 months, then annually
	Remove debris from the catchment surface (where it may cause risk to performance)	Monthly
	For systems where there the rainfall infiltrates into the tank from above, check surface of filter for blockages by sediment, algae or other matter; remove and replace surface infiltration medium as necessary	Annually

	Removed sediment from pre-treatment structures and/or internal forebays	Annually or as required
Remedial Actions	Repair / rehabilitate outlets, overflows and vents	As required
Monitoring	Inspect / check all inlets, outlets, vents and overflows to ensure that they are in a good condition and operating as designed	Annually
	Survey inside of tank for sediment build-up and remove if necessary	Every 5 years or as required

Maintenance Requirements for Gullies, Manholes, Drainage Channels and General Areas		
Item	Required Action	Typical Frequency
Gullies	Inspect to check for drainage, blockages and silt accumulation. Remove all debris and silt where present. Evaluate requirement for any additional works.	Annually
Drainage Channels	Inspect to check for damage, blockages and silt accumulation. Remove all debris and silt where present. Evaluate requirement for any additional works.	Annually
Manholes	Inspect to check for damage, blockages and silt accumulation. Remove all debris and silt where present. Evaluate requirement for any additional works.	Every two years except silt trap manholes which should be annually
Underground Flow Control Device and Manhole	Normally little maintenance is required as there are no moving parts within the flow control units. The units should be hosed down with clean water if required at each inspection.	Initial inspection after 3 months, then annually
Landscaping	Maintain landscaped and grassed areas particularly to prevent soil running onto hardstanding's then into surface water drains	General regular maintenance